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to witnesses that he owned the stock. In a suit for the purchase price the defense was that there was no delivery to take the case out of the Statute of Frauds. *Held*, that the sale was valid. *Wilson v. Hotchkiss*, 154 Pac. 1 (Cal.).

Section 17 of the Statute of Frauds requires that the buyer under an oral contract "shall accept part of the goods so sold and actually receive the same." England has so construed this section as to uphold a sale whenever the buyer has done an act with reference to the goods which recognizes a preëxisting contract of sale. *Kibble v. Gough*, 38 L. T. R. (N. S.) 204; *Page v. Morgan*, 15 Q. B. 228. *Cf. Taylor v. Great Eastern R. Co.*, [1901] 1 K. B. 774. Under this construction it would seem that a declaration of ownership by a purchasing bailee would be a verbal act of recognition. *Edan v. Dudfield*, 1 Q. B. 302; *Taylor v. Wakefield*, 6 El. & Bl. 765, 770. See *Lillywhite v. Devereux*, 15 M. & W. 285, 291. New York, however, has laid down a rule, accepted in several other American jurisdictions, that transfer of possession cannot be evidenced by mere words. *Shindler v. Houston*, 1 N. Y. 261. See WILLISTON, SALES, § 87. And this rule has been applied to invalidate a sale to a bailee in possession unless the form of returning the article and receiving it anew was gone through. *In re Hoover*, 33 Hun. (N. Y.) 553; *Dorsey v. Pike*, 50 Hun. (N. Y.) 534. But *cf. Bristol v. Mente*, 79 N. Y. App. Div. 67, 80 N. Y. Supp. 52. Other courts have recognized that it would not be expedient to require a re-delivery to a purchasing bailee. *Smith v. Bryan*, 5 Md. 141; *Snider v. Thrall*, 56 Wis. 674, 14 N. W. 814. But *cf. Silkman Lumber Co. v. Hunholz*, 132 Wis. 610, 112 N. W. 1081. These decisions are supported by the analogy of the case of gifts, for a parol gift to a donee in possession at the time of the gift, is valid. *Tenbrook v. Brown*, 17 Ind. 410; *Wing v. Merchant*, 57 Me. 383; *Winter v. Winter*, 4 L. T. R. (N. S.) 639. Some courts have gone even further and recognized as valid, parol sales of goods not in the possession of either the owner or the buyer. *Brown v. Wade*, 42 Ia. 647, 650; *Calkins v. Lockwood*, 17 Conn. 154, 173. *Contra, Alderton v. Buchoz*, 3 Mich. 322. The principal case seems correct in distinguishing purchases by a bailee from sales when the seller is in possession. *Cf. Malone v. Plato*, 22 Cal. 103, with principal case.

TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — RECOVERY OF PROFITS ON SALES UNDER INFRINGING DESIGN.— The plaintiffs adopted as a trade-mark for women's shoes the words "The American Girl," under which they advertised and sold their shoes throughout the United States. With full knowledge of this use, the defendants used on a similar grade of shoes the name "The American Lady," sometimes accompanied with their name as "maker," and sometimes with their name only, and sometimes alone. The Circuit Court of Appeals held that the plaintiffs' mark, when applied to women's shoes sold in America, was descriptive and geographical and not subject of a valid trade-mark, but enjoined the unfair competition, and ordered an accounting on the sales of defendants' shoes marked with "The American Lady" without their name as maker annexed. The case came to the Supreme Court on *certiorari*. *Held*, that the words "The American Girl" are subject of a valid trade-mark and that the decree ordering an accounting be affirmed upon that ground. *Hamilton-Brown Shoe Co. v. The Wolf Bros. & Co.*, 240 U. S. 251, 36 Sup. Ct. 269.

The plaintiffs sold hosiery under a label on which was written the word "Notaseme." Without knowledge of this use, defendants used a similar label with the word "Irontex" in place of "Notaseme." The plaintiffs notified the defendants that they were infringing their mark and brought a bill in equity to enjoin this use and to recover profits. There was no evidence of confusion in the public's mind. The markets of the two companies rarely conflicted. *Held*, that the defendants be enjoined from using the label, but an accounting

of profits be denied. *Straus v. Notaseme Hosiery Co.*, 240 U. S. 179, 36 Sup. Ct. 288.

For a discussion of these cases in connection with another recent case, see NOTES, p. 763.

TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — TERRITORIAL LIMITATION OF TECHNICAL TRADE-MARK. — In 1872 the Allen and Wheeler Co. used the words "Tea Rose" as a trade-mark on its flour, making sales throughout Ohio and Pennsylvania, but never advertising nor selling its "Tea Rose" brand in Alabama or the adjoining states. In 1885, without notice of this prior adoption, the Hanover Star Milling Co. used the same brand on its flour for sales throughout Alabama, where it acquired the reputation of being the "Tea Rose Company." In 1895 the Steeleville Milling Co. adopted the same design, and in 1912 sold a quantity of flour of that brand to Metcalf for sale in Alabama. The Hanover Co. obtained a temporary injunction in the District Court, but the United States Circuit Court of Appeals for the Fifth Circuit reversed the decree because of the prior use by the Allen and Wheeler Co. In another district this latter company obtained an injunction against the Hanover Co., but this in turn was reversed by the United States Circuit Court of Appeals for the Seventh Circuit on the ground that the Hanover Co. had acquired a valid trade-mark in Alabama. Because of this diversity on fundamental questions, the cases were brought to the Supreme Court by writs of *certiorari* before final disposition in the lower courts. *Held*, that the Hanover Co. had acquired a valid trade-mark in Alabama. *Hanover Star Milling Co. v. Metcalf*, 240 U. S. 403.

For a discussion of this case with two other recent cases, see NOTES, p. 763.

TRIAL — VERDICT — JOINT TORTFEASORS: SEVERANCE OF DAMAGES. — In an action against joint maintainers of a nuisance the jury found a verdict for \$700 against one defendant and for \$150 against the other. On interrogation by the court they stated their purpose to find the plaintiff's damages equal to \$850 and to divide them between the two defendants. The trial court entered judgment for \$850 against both defendants. *Held*, that the judgment stand. *Wands v. City of Schenectady*, 156 N. Y. Supp. 860 (App. Div.).

The Supreme Court of Michigan has recently upset a verdict of this sort. *Rathbone v. Detroit United Ry.*, 154 N. W. 143. For a criticism of the Michigan decision, see 29 HARV. L. REV. 344.

TRUSTS — CREATION AND VALIDITY — CHARITABLE TRUSTS: PREFERENCES — RULE AGAINST PERPETUITIES. — A will provided for perpetually maintaining a home for "educated Protestant gentlewomen whose means are small," preference to be given to the lineal descendants of seven named relatives and six friends. *Held*, that the trust is charitable, and so is not void as infringing the Rule against Perpetuities. *Matter of MacDowell*, 55 N. Y. L. J. 61 (Court of Appeals).

Under the present New York statutes, the old English law of charitable trusts for undetermined beneficiaries has been restored. *Allen v. Stevens*, 161 N. Y. 122, 55 N. E. 568. Under that law, whether the invalidity of perpetual trusts without defined beneficiaries is due, as is commonly stated, to the Rule against Perpetuities, or more properly to a rule against inalienability, charitable trusts form a clear exception. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., §§ 589-607. Such trusts must be limited to purposes necessarily charitable as defined by the Statute of Elizabeth. *Morice v. Bishop of Durham*, 9 Ves. 399, 10 Ves. 522. But the purpose in question is clearly within the established conception, for the courts have upheld trusts for "reduced gentlewomen," "lady teachers in need of rest," and "wornout clerks." *Attorney General v.*